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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,377	04/02/2004	Henry W. Bonk	402200004dvj	2559

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EXAMINER

BISSETT, MELANIE D

ART UNIT PAPER NUMBER

1711

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/817,377	Applicant(s) BONK ET AL.	
	Examiner Melanie D. Bissett	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 105,129-134 and 184-186 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 105,129-134 and 184-186 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The objections to the drawings and prior art rejections have been withdrawn based on the applicant's amendments. However, the double patenting rejection has been maintained, and new double patenting rejections have been included.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 105 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,013,340 A. Although the conflicting claims are not identical, they are not patentably distinct from each other because of substantial overlap of limitations. Claim 1 of the patent differs only from present claim 105 by limiting the membrane to be sealed and in an inflated state and by lacking specification of testing parameters for the gas transmission rate. Regarding the thickness of the membrane used to test the gas transmission rate, the examiner looks to the patent's specification for guidance. Bonk discloses in the abstract that membranes of 20 mils are used to test gas transmission rates, where the nitrogen

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gas transmission rates of the invention are less than 15.0. The patented claim teaches a sealed and inflated membrane but does not specifically suggest a "cushioning device." Since it is known in the art to use inflated membranes as cushioning devices, it is the examiner's position that it would have been obvious to form a cushioning device from the inflated membranes of the patented claims.

4. Claim 105 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,692,803. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claim includes all the limitations of the present claim. Due to substantial overlapping subject matter, the current claim 105 is unpatentable over the patented claim 1.

5. Claims 129-131 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of either U.S. Patent No. 6,013,340 A or U.S. Patent No. 6,692,803 in view of Howard.

6. The patent applies as above, lacking mention of the formation of bicycle seats and saddles. Howard teaches the conventionality of using air bladders as cushions for the bicycle saddles, where the cushions provide selective air pressure adjustment (abstract). It is the examiner's position that it would have been prima facie obvious to use the air bladders of the patented invention as seat cushioning in bicycle saddles to provide selective air pressure adjustment.

7. Claims 184-186 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of either of U.S. Patent No. 6,013,340 A or U.S. Patent No. 6,692,803 in view of Massara et al.

8. The patent applies as above, lacking mention of the formation of seat cushions including lumbar supports. Massara teaches the conventionality of using air bladders as cushions for the lumbar region of a seat back, where the cushions provide selective contoured adjustment (abstract). It is the examiner's position that it would have been prima facie obvious to use the air bladders of the patented invention as seat cushioning in the lumbar region of a seat back to provide selective contoured adjustment having improved air retention.

9. Claims 132-134 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of either of U.S. Patent No. 6,013,340 A or U.S. Patent No. 6,692,803 in view of Lyden.

10. The patent applies as above, lacking mention of the formation of protective equipment. Lyden teaches the conventionality of using air bladders as cushions for the shin guards, helmets, and other equipment, where the cushions provide conformable protective equipment (col. 5 line 66-col. 6 line 11; col. 7 lines 11-30). It is the examiner's position that it would have been prima facie obvious to use the air bladders of the patented invention as cushioning in shin guards or helmets to provide contoured cushioning.

***Response to Arguments***

11. In response to the applicant's arguments that the double patenting rejection based on US 6,013,340 is prohibited by the restriction in a parent application, it is noted that the patented claims have been amended after the restriction requirement to include limitations that bring the scopes of the claims closer together. The patented claims limit the membrane to be in a sealed and inflated state, providing a cushioning device. The current claims are drawn to a cushioning device formed from a membrane having the same gas transmission rate as that of the patented claim. It is the examiner's position that the double patenting rejection is proper. Regarding the new double patenting rejections, the patented claims of US 6,692,803 do not appear to have been restricted from the present original claims. Thus, it does not appear that this is an issue for the new double patenting rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie D. Bissett whose telephone number is (571) 272-1068. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melanie D. Bissett  
Patent Examiner  
Art Unit 1711

mdb